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BEFORE THE
DEPARTMENT OF TRANSPORTATION
TRANSPORTATION SECURITY ADMINISTRATION
WASHINGTON, D.C.

Interim Final Rule	)	
	)	
Aviation Security Infrastructure Fees	)	Docket TSA-2002-11334 -14
	)	
49 C.F.R. Part 1511	)	
	)	

COMMENTS OF BRITISH AIRWAYS

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COMMENTS OF BRITISH AIRWAYS

British Airways welcomes the opportunity to comment on the interim final rule imposing aviation security infrastructure fees published in the Federal Register on February 20, 2002 (67 Fed. Reg. 7926). As a leading international carrier, British Airways treats passenger security as of the highest priority and accepts its share of the burden of maintaining that security. It further recognizes the demands placed on the Government in the aftermath of the tragic events of September 11, 2001 and the obligations of the Transportation Security Administration (TSA) under the Aviation and Transportation Security Act. However, British Airways urges the TSA to recognize its concurrent obligation to comply with applicable international agreements when imposing user charges on United Kingdom and other non-U.S. carriers, including the Air Services Agreement between the United States and the United Kingdom (Bermuda 2 Agreement).

Pursuant to Article 10 of Bermuda 2, user charges must be "just and reasonable" and may "not exceed by more than a reasonable margin, over a reasonable time, the full cost to the competent charging authorities of providing the appropriate... aviation security facilities and services at the airport or within the airport system." Article 10 further requires that consultations be encouraged between the charging authorities and affected airlines and that adequate information be provided to enable such airlines to evaluate the reasonableness of the charges.

The consultation principles clearly set out in Article 10 are supported by the Statements by the Council of the Intemational Civil Aviation Organization to Contracting States on Charges for Airports and Air Navigation Services (commonly referred to as Document 9082). Paragraph 20 of Document 9082 recommends, among other things, that:

- Consultations should take place before any security costs are to be assumed by airports, airlines or other entities.
- Any charges or transfers of security costs should be directly related to the costs of providing the security services concerned and should be designed to recover no more than the relevant costs involved.
- Charges may be levied either as additions to other existing charges or in the form of separate charges but should be subject to separate identification of costs and appropriate explanation.

While the Aviation and Transportation Security Act required the TSA to impose the $2.50 Civil Aviation Security Service Fee within 60 days after enactment, there is no equivalent mandatory deadline for implementing the aviation security infrastructure fee. Accordingly, TSA is under no legislative compulsion to act so hastily so as to preclude compliance with Bermuda 2 and other intemational agreements.

Although British Airways welcomes the opportunity to comment, this is not, nor could it be, a substitute for the Bermuda 2 consultation process endorsed by Document 9082. That process, as implemented by aviation authorities throughout the world, affords carriers the opportunity to evaluate data on costs that the fees are intended to cover, and the opportunity to provide their views prior to finalization of the charges. Adherence to this established process is beneficial to all concerned in that it maximizes the probability that the charges imposed will be closely related to the cost of the corresponding services. Importantly, it increases the probability that the charges will be understood and accepted by the airlines being asked to pay them.

It is in the interest of the United States to comply with established consultation procedures. Due to its leading role in aviation matters, the example set by the United States often influences other nations which may impose their own security fees. Accordingly, failure by the United States to respect established consultation procedures could encourage other nations to do likewise, disrupting and possibly destroying the cooperative process so vital to effective security.

The "Economic Analyses" section of the IFR acknowledges that it "may impose significant costs on air carriers and foreign air carriers" and states that "an assessment in accordance with [Executive Order 12866] will be conducted in the future." British Airways welcomes that assurance and urges the TSA to complete and publicize that assessment at the earliest opportunity. The TSA should then convene the consultations required by Bermuda 2 and other applicable international aviation agreements. They should be conducted prior to issuance of a final rule.

The Air Transportation Association of America (ATA), in comments submitted on March 18,2002, urged TSA to provide cost estimates envisioned by Congress before imposing any fees and to "permit public participation in the determination of appropriate security programs/costs." British Airways supports those requests, which are consistent with the consultation obligations discussed above.

British Airways also supports requests by the ATA that carriers not be required to pay for services TSA has not assumed, that Appendix **A** be modified to eliminate the requirement that carriers provide cost data for security services not assumed by TSA, and that TSA simplify Appendix A by eliminating data reporting categories not generally maintained by or otherwise available to carriers.

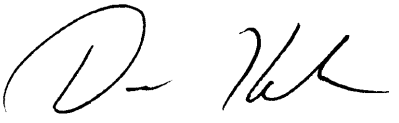
Notably, the preamble to the IFR includes the Federal air marshals program among the services to which the aviation security infrastructure fees will be applied. To the extent that foreign air carriers do not benefit from the air marshals program or other services subsidized by the security infrastructure fees they should be exempted from a corresponding portion of the fees assessed.

British Airways has not been able to complete its review of the specific accounting auditing and remitting requirements established by the IFR in the limited time provided. Accordingly, it may submit additional comments addressing those issues. If further comments are necessary, it will endeavor to submit them at the earliest possible time.

Finally, British Airways also supports the request, made both by ATA and by the American Institute of Certified Public Accountants, that carrier audit deadlines and other target dates be extended for a reasonable period following issuance of additional written guidance by TSA clarifying the issues raised in comments responding to the February 20 interim final rule.

In conclusion, British Airways urges the TSA to fully comply with its obligation to engage in consultations with other governments prior to the issuance of a final rule, and that it provide cost estimates and delete required cost data for security services not provided as described herein. British Airways looks forward to continuing to work constructively with the Transportation Security Agency to develop mutually acceptable security fees and otherwise cooperating on the important business of maintaining and improving aviation security.

Respectfully submitted,



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